United Nations S/AC.43/2013/1

Security Council

Distr.: General
21 March 2013

Original: English

Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo

Note verbale dated 18 March 2013 from the Permanent Mission of Portugal to the United Nations addressed to the Chair of the Committee

The Permanent Mission of Portugal to the United Nations presents its compliments to the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo and, in accordance with paragraph 7 of Security Council resolution 1857 (2008), paragraph 5 of resolution 1952 (2010), paragraph 19 of resolution 2021 (2011) and paragraph 22 of resolution 2078 (2012), has the honour to transmit to the Committee information regarding the measures taken to implement the restrictive measures called for in Council resolutions on this matter (see annex).

Portugal has implemented the above-mentioned restrictive measures through European Union law and national legislation. The annexed report is therefore divided into two sections, one dedicated to the implementation of the restrictive measures through European legal instruments and the other to implementation through national law.

Please recycle

Annex to the note verbale dated 18 March 2013 from the Permanent Mission of Portugal to the United Nations addressed to the Chair of the Committee

1. European Union law

Owing to the fact that several European Union member States have already submitted implementation reports to the Committee, in which they refer consistently to the different instruments that constitute the European Union legal framework on this subject, and for the sake of brevity, the present report will succinctly mention the existing legislation and the most recent updates thereto.

The essential legal instruments are:

(a) Decision 2010/788/CFSP of 20 December 2010 concerning restrictive measures against the Democratic Republic of the Congo and repealing Common Position 2008/369/CFSP, which aims to implement all the measures set out in Security Council resolutions 1596 (2005), 1807 (2008), 1857 (2008), 1896 (2009), 1952 (2010), 2021 (2011) and 2078 (2012) of 28 November 2012, as amended by the following European Union decisions: Council Implementing Decisions 2011/699/CFSP of 20 October 2011 and 2011/848/CFSP of 16 December 2011, as well as Council Decision 2012/811/CFSP of 20 December 2012;

(b) Council Regulation (EC) No. 889/2005 of 13 June 2005 imposing certain restrictive measures in respect of the Democratic Republic of the Congo, especially regarding the provision of assistance to military activities, and repealing Council Regulation (EC) No. 1727/2003, as modified by Council Regulation (EC) No. 1377/2007 of 26 November 2007 and Council Regulation (EC) No. 666/2008 of 15 July 2008;

(c) Council Regulation (EC) No. 1183/2005 of 18 July 2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo, as modified by Council Regulation (EC) No. 1791/2006 of 20 November 2006. Annex I to Regulation No. 1183/2005 consists of a list of persons and legal entities subject to the freezing of funds and economic resources; the list has been updated to reflect the decisions of the Security Council through Commission Implementing Regulations (EU) No. 1097/2011 of 25 October 2011, No. 7/2012 of 5 January 2012, No. 1251/2012 of 20 December 2012 and No. 53/2013 of 22 January 2013.

Council Regulation (EC) No. 539/2001 of 15 March 2001 (as amended) comprises a list of third countries whose nationals must be granted visas when crossing the external borders of the European Union; as such, it requires nationals of the Democratic Republic of the Congo to be in possession of a visa when entering the European Union. The Regulation is applied in conjunction with other European Union and national legislation on the subject of admission into Portuguese territory (see section 2 (c)) of the present report).

2. National measures

(a) Arms embargo

The control of exports of military goods and technology is based on (a) the requirement of previous clearance of companies for the manufacture and commerce

of such goods, and (b) the adoption of control procedures at the final destination. In the cases specified in article 19 of Law 37/2011 of 22 June 2011 the export, re-export, temporary import and transit of defence-related goods may only be authorized by the Ministry of National Defence with the concurring opinion of the Ministry of Foreign Affairs.

The control of weapons and ammunition not destined to the armed forces or the security forces is incumbent on the Public Security Police (Policia de Segurança Publica) under the supervision of the Ministry of Internal Administration, according to Law 5/2006 of 23 February, as amended by Law 17/2009 of 16 May 2009 and Law 12/2011 of 27 April 2011. Regulation No. 258/2012 of the European Parliament and the Council of 14 March 2012 implementing article 10 of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime and establishing export authorization, as well as import and transit measures for firearms, their parts and components and ammunition, will require Law 5/2006 to be amended further. Law 12/2011 established that, should there be doubt about compliance with the European Union Code of Conduct on Arms Exports by the destination country of an arms export, the Public Security Police may request the non-binding opinion of the Ministry of Foreign Affairs.

Portugal has not exported, imported or allowed transit through its territory of any military good or technology identified in the Common Military List (as per Decree Law 153/2012 of 16 July 2012) to the Democratic Republic of the Congo in the past five years.

(b) Assets freeze

The Bank of Portugal (Banco de Portugal), as part of its competences as the Portuguese central bank and part of the European System of Central Banks, is entrusted with overseeing the banking sector. Article 2 of its Public Notice No. 9/2012 of 17 May 2012 (Aviso do Banco de Portugal) provides that institutions must send to the Bank of Portugal, annually, a specific report on their internal control system for the prevention of money-laundering and financing of terrorism, including the information called for in the annex to the Public Notice Paragraph 3.15 (f) of the annex to the Public Notice indicates that the report should include information on transactions related to countries, jurisdictions, entities or individuals that have been the object of sanctions or restrictive measures imposed by the Security Council or by the European Union. Even though Public Notice 9/2012 does not aim specifically at implementing resolutions related to the sanctions regime on the Democratic Republic of the Congo, its rationale may lead to greater awareness of them among banking and financial institutions.

The Securities Market Commission (Comissão do Mercado de Valores Mobiliarios), is the national public authority in charge of regulating the financial sector. The Commission publicizes the legal and regulatory measures applicable to the financial institutions under its supervisory powers, and verifies whether such institutions are duly equipped to perform internal controls on whether their clients are, or may be, subject to sanctions. The Commission also submits reports of suspicious transactions made by financial institutions to the competent authorities.

Portuguese authorities have not identified nor received reports on suspicious transactions made by persons subject to the restrictive measures regarding the Democratic Republic of the Congo.

(c) Travel ban

The Immigration and Borders Service (Serviço de Estrangeiros e Fronteiras) is the public service in charge of controlling the movement of individuals across Portuguese borders. Its Central Directorate for Immigration, Document Control and Verification (Direcção Central de Imigração, Controlo e Peritagem Documental) has registered the sanctions measures established by the Security Council in its resolution 1533 (2004) and subsequent relevant resolutions, and is in charge of preventing individuals on the consolidated travel ban list from transiting through or entering into Portuguese territory through the implementation of the Convention Implementing the Schengen Agreement of 19 June 1990, to which Portugal is a party.

Nationals of the Democratic Republic of the Congo travelling to Portugal require a visa in order to enter the territory of the European Union and travel restrictions are implemented through the visa application process. Denials of visa applications are governed primarily by the Convention Implementing the Schengen Agreement, which regulates the entry of third-country nationals into the Schengen area and to which Portugal is a party. Article 5, paragraph 1, of the Convention sets the conditions for entry into the territories of the Contracting Parties. Paragraph 2 of that article states that an alien who does not fulfil all of those conditions must be refused entry into the territories of the Contracting Parties. Since the individuals subject to the measures ordered by the Security Council do not meet the conditions set out in article 5, paragraph 1 (e), of the Convention — according to which the alien shall not be considered to be a threat to public policy, national security or the international relations of any of the Contracting Parties — they may not be granted entry into Portuguese territory. Pursuant to articles 15 and 18 of the Convention, denial of entry into the territory applies both to uniform short-stay visas valid for the entire territory of the Contracting Parties and to national long-stay visas.